IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 8 of 2005
In
MISC. CIVIL APPLICATION No. 79 of 2004
In STAMP NUMBER No. 1311 of 2004
With
CIVIL APPLICATION No. 47 of 2005
In O.J.APPEAL No. 8 of 2005
With
CIVIL APPLICATION No. 139 of 2005
In O.J.APPEAL No. 8 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHAVIR DEVELOPERS - Appellant(s)

Versus

O.L. OF M/S. NEW GUJARAT SYNTHETICS LTD. & 7 - Opponent(s)

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Appearance :

MR BHARAT T RAO for Appellant(s) : 1,
DS AFF.NOT FILED (N) for Opponent(s) : 1, 3, 5,
MR ANIP A GANDHI for Opponent(s) : 2,
MR HM BHAGAT for Opponent(s) : 4,
MR RM DESAI for Opponent(s) : 6,
MR DS VASAVADA for Opponent(s) : 7,
MR GM JOSHI for Opponent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE M.C.PATEL

Date : 17/11/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

On 1st April, 2005, on the instructions of Mr. Mahavirchand Kundanmal Jain of the appellant M/s. Mahavir Developers, his the then learned counsel Shri Bharat Rao made a statement at the bar before the Division Bench of this court consisting of R.S. Garg and Ravi R. Tripathi, JJ. that the appellant was ready and willing to give up his claims relating to the area of the plot in question and he was also ready and willing to purchase the said land for the amount of Rs.9 crores 11 lakhs. It was also stated that 25% of the bid amount would be deposited by him within six weeks from the date of the order i.e. 01st April, 2005 and the balance 75% amount be deposited within ten weeks thereafter after adjusting the earnest money. It was also stated at the bar that the appellant was ready and willing to pay late payment interest at the rate of 11.5% subject to an application made by him for waiving the said interest in view of the fact that he was losing almost 2000 sq. mtr. area of land.

2. On the aforesaid statement made at the bar by learned counsel Shri Bharat Rao for the appellant, the Division Bench of this court admitted this appeal and

notice was ordered to be issued to the respondents making it returnable on 3rd May, 2005.

2.1 On Civil Application No.47 of 2005 for stay, the same Division Bench of this court, while issuing rule making it returnable on 3rd May, 2005, by way of interim relief, ordered that until further orders of the court, the property in question shall not be put to auction. However, the solemn statement made at the bar by the learned counsel of the appellant on 01st April, 2005 was not complied with. Therefore, another Civil Application No.139 of 2005 was filed for extension of time by the applicant – appellant by changing his advocate Mr. Nehal Joshi who has now filed retirement purshis dated 27th September, 2005 stating that his client Shri Mahavirchand Kundanmal Jain of the appellant M/s. Mahavir Developers has taken away all the papers from him as he wanted to engage some other lawyer. Earlier, he had also given notice to him that for want of instructions and in absence of papers in O.J. Appeal No.8 of 2005, it would be difficult for him to proceed further in the matter as he was engaged only in Civil Application for extension of time for depositing the amount. However, the papers were taken away by the appellant, therefore, his name be

deleted from Civil Application No.139 of 2005.

3. In view of the aforesaid purshis filed by Mr. Joshi, he has not remained present today. Similarly, Mr. Rao has also not remained present. The learned counsel for the respondents who were present before the court stated at the bar that after getting the appeal admitted on the solemn statement made before this court on 01st April, 2005, the appellant has not deposited the amount as per the statement and is enjoying interim relief by changing advocates.

4. Under the circumstances, there is no other option for this court to dismiss the appeal which was admitted on a solemn statement made at the bar by learned counsel for the appellant. Accordingly, it is dismissed.

5. As the main appeal is dismissed, Civil Application No.47 of 2005 has to be dismissed. Accordingly, it is dismissed. Once the appeal and Civil Application for stay is dismissed, then there is no question of entertaining subsequent Civil Application i.e. Civil Application No.139 of 2005 for extension of time. Accordingly, the same is also dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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